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 CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 BY:  DEPUTY

Attorneys for the Plaintiffs
 Mark and Lori Roberts

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

Mark and Lori Roberts	Case Number: '09 CV 0578	MMA NLS
Plaintiffs,	Complaint For Damages	
v.	Jury Trial Demanded	
CMRE Financial Services		
Defendant.		

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors,

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1 to insure that those debt collectors who refrain from using abusive debt
2 collection practices are not competitively disadvantaged, and to promote
3 consistent State action to protect consumers against debt collection abuses.

4 2. The California legislature has determined that the banking and credit system
5 and grantors of credit to consumers are dependent upon the collection of just
6 and owing debts and that unfair or deceptive collection practices undermine
7 the public confidence that is essential to the continued functioning of the
8 banking and credit system and sound extensions of credit to consumers. The
9 Legislature has further determined that there is a need to ensure that debt
10 collectors exercise this responsibility with fairness, honesty and due regard
11 for the debtor's rights and that debt collectors must be prohibited from
12 engaging in unfair or deceptive acts or practices.

13 3. Mark and Lori Roberts, (Plaintiffs), through Plaintiffs' attorneys, bring this
14 action to challenge the actions of CMRE Financial Services, ("Defendant"),
15 with regard to attempts by Defendant to unlawfully and abusively collect a
16 debt allegedly owed by Plaintiffs, and this conduct caused Plaintiffs damage.

17 4. Plaintiffs make these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiffs allege on personal knowledge.

20 5. Unless otherwise stated, Plaintiffs allege that any violations by Defendant
21 were knowing and intentional, and that Defendant did not maintain
22 procedures reasonably adapted to avoid any such violation.

23 JURISDICTION AND VENUE

24 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
25 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

26 7. This action arises out of Defendant's violations of the Fair Debt Collection
27 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair
28

1 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32
2 (“RFDCPA”).

3 8. Because Defendant does business within the State of California, personal
4 jurisdiction is established.

5 9. Venue is proper pursuant to 28 U.S.C. § 1391.

6 **PARTIES**

7 10. Plaintiffs are natural persons who reside in the City of San Diego, County of
8 San Diego, State of California.

9 11. Defendant is located in the City of Brea, the County of Orange, and the State
10 of California.

11 12. Plaintiffs are obligated or allegedly obligated to pay a debt, and are
12 “consumers” as that term is defined by 15 U.S.C. § 1692a(3).

13 13. Defendant is a person who uses an instrumentality of interstate commerce or
14 the mails in a business the principal purpose of which is the collection of
15 debts, or who regularly collects or attempts to collect, directly or indirectly,
16 debts owed or due or asserted to be owed or due another and is therefore a
17 debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

18 14. Plaintiffs are natural persons from whom a debt collector sought to collect a
19 consumer debt which was due and owing or alleged to be due and owing from
20 Plaintiffs, and are “debtors” as that term is defined by California Civil Code §
21 1788.2(h).

22 15. Defendant, in the ordinary course of business, regularly, on behalf of himself,
23 herself, or others, engages in debt collection as that term is defined by
24 California Civil Code § 1788.2(b), is therefore a debt collector as that term is
25 defined by California Civil Code § 1788.2(c).

26 //

27 //

1 16. This case involves money, property or their equivalent, due or owing or
2 alleged to be due or owing from a natural person by reason of a consumer
3 credit transaction. As such, this action arises out of a consumer debt and
4 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

5 **FACTUAL ALLEGATIONS**

6 17. At all times relevant to this matter, Plaintiffs were individuals residing within
7 the State of California.

8 18. At all times relevant, Defendant conducted business within the State of
9 California.

10 19. Sometime before January 16, 2008, Plaintiffs are alleged to have incurred
11 certain financial obligations.

12 20. These financial obligations were primarily for personal, family or household
13 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
14 §1692a(5).

15 21. These alleged obligations were money, property, or their equivalent, which is
16 due or owing, or alleged to be due or owing, from a natural person to another
17 person and are therefore a “debt” as that term is defined by California Civil
18 Code §1788.2(d), and a “consumer debt” as that term is defined by California
19 Civil Code §1788.2(f).

20 22. Sometime thereafter, but before January 16, 2008, Plaintiffs allegedly fell
21 behind in the payments allegedly owed on the alleged debt. Plaintiffs
22 currently dispute the validity of this alleged debt.

23 23. Subsequently, but before January 16, 2008, the alleged debt was assigned,
24 placed, or otherwise transferred, to Defendant for collection.

25 24. On or about January 16, 2008, Defendant mailed a dunning letter to Plaintiffs.
26 A few days later, Plaintiffs received that letter.
27
28

- 1 25. This communication to Plaintiffs was a "communication" as that term is
2 defined by 15 U.S.C. § 1692a(2), and an "initial communication" consistent
3 with 15 U.S.C. § 1692g(a).
- 4 26. This communication was a "debt collection" as Cal. Civ. Code 1788.2(b)
5 defines that phrase, and an "initial communication" consistent with Cal. Civ.
6 Code § 1812.700(b).
- 7 27. This January 16, 2008 letter included the language necessary to meet the
8 requirements of 15 U.S.C. § 1692g(b).
- 9 28. On or about February 10, 2008, Plaintiffs sent a letter to Defendant in which
10 Plaintiff disputed the validity the debt in a manner consistent with the
11 requirements in 15 U.S.C. § 1692g(b).
- 12 29. Plaintiffs are informed and believe, and thereon allege, that Defendant
13 received Plaintiffs dispute letter on February 13, 2008, well within Plaintiffs'
14 30 day dispute period.
- 15 30. On or about April 3, 2008, Defendant filed a lawsuit in The Superior Court of
16 California, County of San Diego, Case number 37-2008-00052877-CL-CL-
17 NC, in an attempt to collect the alleged debt.
- 18 31. On or about April 17, 2008, Plaintiffs were served a Summons and Complaint
19 for Case number 37-2008-00052877-CL-CL-NC.
- 20 32. By sending this communication, and demand for payment, before validating
21 the debt as required pursuant to 15 U.S.C. § 1692g(b), Defendant violated 15
22 U.S.C. § 1692g.
- 23 33. By sending the above communications, Defendant acted in a manner that was
24 deceptive, unfair, and unconscionable, thereby violating 15 U.S.C. §§ 1692e,
25 1692e(10) and 1692f.
- 26 34. Because these April 3, 2008 and April 17, 2008 communications did not
27 comply with certain provisions of the FDCPA including, but not limited to, 15
28

U.S.C. §§ 1692e, 1692e(10), 1692f, and 1692g, these communications also violated Cal. Civ. Code § 1788.17.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. §§ 1692 ET SEQ.

35. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.
36. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
37. As a result of each and every violation of the FDCPA, Plaintiffs are entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

COUNT II

VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

CAL. CIV. CODE §§ 1788-1788.32

38. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.
39. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.
40. As a result of each and every violation of the RFDCPA, Plaintiffs are entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered against Defendant, and Plaintiffs be awarded damages from Defendant, as follows:

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. §§ 1692 ET SEQ.

41. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
42. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
43. An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3).

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

CAL. CIV. CODE §§ 1788-1788.32


44. An award of actual damages pursuant to California Civil Code § 1788.30(a);
45. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
46. An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

TRIAL BY JURY

47. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Date: March 23, 2009

Hyde & Swigart

By: 
Joshua B. Swigart
Attorneys for the Plaintiffs

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Mark and Lori Roberts

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart

411 Camino Del Rio South Suite 301, San Diego, CA 92108

DEFENDANTS

CMRE Financial Services

County of Residence of First Listed Defendant Orange

(IN U.S. PLAINTIFF CASES, USE THE LOCATION OF THE LAND INVOLVED.)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'09 CV 0578

MMA NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Redteer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 375 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC 1692
Brief description of cause:
FDCPA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23DEMAND \$
75,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/23/09

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

161297

AMOUNT

350.-

APPLYING IFP

JUDGE

MAG. JUDGE

3/23/09

ORIGINAL

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

**# 161297 - SR
* * C O P Y * *
March 23, 2009
13:15:49**

Civ Fil Non-Pris

USAO #.: 09CV0578
Judge.: MICHAEL M. ANELLO
Amount.:
Check#.: BC#2968 \$350.00 CK

Total-> \$350.00

**FROM: ROBERTS V. CMRE FINANCIAL
CIVIL FILING**